THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.26994 of 1998

Dated 05-06-2007

Between:

M/s Auto Suppliers,
rep. by its Managing Partner,
Basheerbagh, Hyderabad.

…Petitioner

And

The Government of Andhra Pradesh,
rep. by its Secretary to Government, and others.

…Respondents

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ORDER:

The petitioner is a lessee of land, belonged to the Government, satiated at Basheerbagh Cross Roads, Hyderabad, since last several decades. Petitioner established a petroleum outlet and was running the same. Lease was renewed in several spells; and the last was up to the year 1987. Thereafter the petitioner claims to have made representations to the respondents for transfer of the lease on outright sale. The application of the petitioner was processed at various stages and ultimately, the Additional Collector and District Magistrate, Hyderabad, addressed letter dated 15-07-1992 to the Commissioner of Land Revenue, pointing out that the request of the petitioner for transfer of 561 sq. yards may be acceded to, subject to certain conditions. The proposal emanated from the Hindustan Petroleum Corporation also. Even while the proposal was under consideration, the Mandal Revenue Officer, Nampally, the 3rd respondent, issued a notice dated 06-03-1998 under Section 7 of the A.P. Land Encroachment Act (for short '*the Act*'). The petitioner submitted its explanation/representation on 07-03-1998. Thereafter, the 3rd respondent passed an order of eviction dated 15-09-1998. The same is challenged in this writ petition.

Petitioner contends that there was absolutely no justification for the respondents in directing eviction, even while the proposal for sale

is under active consideration.

The respondents filed a counter affidavit. It is stated that the lease in favour of the petitioner expired way back in the year 1987 and ever since then, it committed default in payment of rents. It is also stated that the petitioner did not take any steps to get the lease extended, and mere pendency of proposal for alienation of the land is no ground for the petitioner to continue the premises.

Heard Sri M.R.K. Choudhary, learned Senior Counsel appearing for the petitioner, and learned Government Pleader for Revenue.

It is not in dispute that the petitioner was inducted into possession of the land as a lessee. The lease was extended from time to time, up to 1987. The petitioner made applications for extension of the lease as well as to transfer the land in its favour,
on outright sale. The petitioner did pursue the matter. The letter dated 15-07-1992, addressed by the Additional Collector and District Magistrate, Hyderabad, makes detailed reference to the various steps that have taken place, on the application made by the petitioner. He has even indicated the cost of the land to be received as sale consideration.

The A.P. Land Encroachment Act can be invoked only in cases where an individual is an unauthorized possession of the Government Land. A lessee, even the one, who is holding over, cannot be branded as an encroacher. His possession cannot be treated as illegal. At any rate, the respondents themselves were actively considering the proposal of the petitioner for transfer of the land on outright sale. Therefore, the impugned order cannot be sustained.

In the impugned order as well as in the counter affidavit
it was categorically stated that the petitioner stopped payment of rents

from 1987 onwards. 20 years have elapsed; the petitioner is enjoying the public premises without payment of rent. The place is at an important center, surrounded by prominent establishments. Notwithstanding the fact that the part of the area has been effected by road widening, its utility remains intact. It is not known as to why the respondents did not take any steps to recover the rent, even while the steps for eviction or alienation were in progress. The petitioner cannot be extended the relief prayed for by it, without requiring it to pay certain reasonable amount towards the rent, for the past 20 years.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. The respondents 1 and 2 shall consider the application of the petitioner for alienation of the land, or extension of the lease, as the case may be, and communicate the result thereof, within a period of three months from today, to the petitioner. As a condition precedent for the said exercise,

the petitioner shall deposit a sum of Rs.10 lakhs (ten lakhs), within four weeks from today, towards tentative rent for the past 20 years. The respondents 1 and 2 shall fix the amount, payable by the petitioner towards rent, or the charges for use of the place for this period, within a period of two months from today. The future relationship of the petitioner and the respondents shall depend upon the outcome of the orders that respondents 1 and 2 may pass on the application filed by the petitioner for alienation or extension of the lease. In case, the petitioner fails to deposit the rent of

Rs.10 lakhs, as directed above, the impugned order shall remain intact, and it shall be liable to be evicted.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.05-06-2007.

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